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ATTORNEY GENERAL OF WASHINGTON

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October 15, 2001

Members of the Public Disclosure Commission
Vicki Rippie, Executive Director
711 Capitol Way, Room 206
P.O. Box 40908
Olympia, WA 98507

RE: In the Matter of Enforcement Action Against Tacoma School District
PDC Case No. 01-199

Dear Ms. Rippie and Members of the Public Disclosure Commission:

On October 5, 2001, the Washington Education Association Political Action Committee ("WEA-PAC") submitted a short letter to you in lieu of filing an Amicus Brief in the above-captioned matter. Public Disclosure Commission Staff ("Staff") submits this brief response for your consideration.

WEA-PAC maintains that the Commission will "enforce an interpretation of the Statute [RCW 42.17.680] which would require an employer to release the names, home addresses, phone numbers or Social Security numbers of the individuals signing those forms." WEA-PAC claims this information is exempt under RCW 42.17.310(b), which exempts "[p]ersonal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy."

WAC 390-17-100, which lists the information required on political contribution withholding authorizations, does not require an employee to submit personal information. In fact, the **only** information required under the WAC in WEA-PAC's list of concerns is the name and signature of the employee. Staff agrees information such as an employee's home address and Social Security number is exempt from disclosure under RCW 42.17.310(b). As the WEA designed the present form, they could include only the information required by the WAC and avoid any disclosure of truly private information. In addition, Staff does not object to each school district maintaining a binder of properly redacted forms in the front office for public inspection during normal business hours.

To redact **all** information from the authorization forms, including an employee's name and signature, however, effectively eliminates the protections of RCW 42.17.680(4). There is no ability for a member of the public to verify a given district is complying with the law if the name is absent from the authorization form. In addition, the name of a public employee is not the type of information that is so personal as to be exempt under the Public Records Act. *See, Cowles Publishing Company v. Washington State Patrol*, 109 Wn.2d 712 (1988)(holding that disclosure



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of State Patrol Officers' names in internal affairs investigative files does not violate their right to privacy and is thus not exempt under RCW 42.17.310(b)).

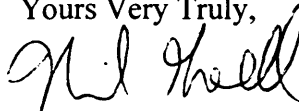
WEA-PAC also contends RCW 42.17.680 and WAC 390-17-100 are unconstitutional. It is well established in Washington law that administrative agencies, such as the PDC lack the authority to determine the constitutionality of statutes. *Yakima County Clean Air Authority v. Glascam Builders Inc.*, 85 Wn.2d 255, 257 (1975). To aid the Commission, however, Staff briefly responds to the constitutional arguments.

The disclosure requirements of RCW 42.17.680(4) are constitutional. The constitutionality of disclosure requirements was addressed by the United States Supreme Court in its landmark decision *Buckley v. Valeo*. 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). The Court held that disclosure of contribution information enhances voters' knowledge about a candidate's possible allegiances and interests, deters corruption, and allows for the enforcement of contribution limits. *Id.* at 66-68. Moreover, the Court specifically held that "disclosure requirements certainly in most applications appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist." *Id.* at 68. The same can be said for the disclosure requirements of RCW 42.17.680(4).

RCW 42.17.680(4) does not violate the First Amendment. The *Buckley* Court addressed concerns of freedom of speech and association in the context of disclosure requirements. The Court held that the government is prohibited from compelling disclosure by a minor political party that can show a reasonable probability the compelled disclosure will subject those identified to "threats, harassment, or reprisal from government officials or private parties." *See, Buckley* 424 U.S. at 74. The WEA is not a minor political party nor has it provided proof that mere production of the name associated with the authorization forms would subject its members to the danger or reprisals. Therefore, the disclosure requirements do not violate the WEA-PAC members' freedom of speech or association.

In short, it is Staff's position that WEA-PAC does not raise justiciable issues in this forum, and respectfully requests that you find multiple violations by the Respondent Tacoma School District.

Yours Very Truly,



F. NEIL GORRELL
Assistant Attorney General

cc: Susan Schreurs, General Counsel, Tacoma Public Schools
Michael Gawley, Attorney for WEA-PAC
Harriet Strasberg, Attorney for WEA-PAC